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FARKAS & MANELLI PLLC
ATTORNEYS

January 19, 2001

VIA COURIER
Ms. Esther Kepplinger
Director of Group 1700
United States Patent & Trademark Office
Washington, D.C. 20231

Re: U.S. Patent Application Serial Nos.: 09/009,837; 09/008,947; 09/009,294; 09/009,455; 09/110,678; 09/111,160; 09/111,003; 09/501,622; 09/110,694; 09/110,717; 09/225,687; and 09/362,693
Inventor: Dr. Randell L. Mills
Examiners: S. Kalafut and H. Langel

Dear Ms. Kepplinger:

This letter is to advise you that Dr. Mills has arranged for a personal interview with Examiners Kalafut and Langel for February 21, 2001, 10:00 AM, to discuss outstanding Office Actions in all of the above-identified patent applications. Since all of the applications contain similar rejections under 35 U.S.C. §§ 101 and 112 based on issues relating to quantum mechanics, in particular the Schrodinger Equation, the Examiners and Dr. Mills have agreed that it would be prudent to conduct the interview simultaneously in all applications. To assist Dr. Mills in adequately preparing for this interview, we request that the Patent Office provide certain information as detailed below, which frankly should have been disclosed to Dr. Mills long ago. We also request the presence of certain Patent Office personnel, including yourself, at the February 21st interview to facilitate a prompt resolution of all outstanding issues.

As you are no doubt aware, the Patent Office's position as to the patentability of Dr. Mills' technology has changed radically over the last year. Initially, during our February 28, 2000 discussion, you stated that our '294 application was being withdrawn from allowance because Dr. Mills' technology was based on "cold fusion" and "perpetual motion." Only after Dr. Mills took this matter to a federal district court did the Patent Office abruptly alter its position. According to the March 22, 2000 Decision on Petition filed in that case, the '294 application was withdrawn because Dr. Mills' technology supposedly violated "the laws of chemistry and physics," even though no specific law of chemistry or physics was identified.

In the most recent Office Actions entered in the above-identified applications, the Patent Office once again has changed its position. The Patent Office now argues that Dr. Mills' technology cannot exist because it is not in compliance with the Schrodinger Equation, which is neither a law of physics or chemistry. In support of its new position, the Patent Office argues that "[n]ot every mathematically possible solution to the Schrodinger Equation leads to a physically meaningful description."[1] That argument, however, only begs the question: How can one know which solutions of the Schrodinger Equation represent physical reality other than by actual measurements of hydrogen atoms?

Dr. Mills has now found additional solutions to the Schrodinger Equation that represent physical reality, namely, fractional quantum number states, which are supported by actual measurements of newly-created compounds containing hydrogen atoms at these lower-energy states. Examiners Kalafut and Langel extensively studied this experimental data during six personal interviews and, based on this evidence, allowed five of the above-identified applications (now withdrawn) and issued U.S. Patent No. 6,024,935 ('935 patent). Dr. Mills intends to resubmit this substantial experimental evidence in the February 21st interview, as well as recent experimental evidence, to again establish the existence of these lower energy states to the satisfaction of the Patent Office, and thereby demonstrate the utility and enablement of his invention.

Based on the prior representations of Examiners Kalafut and Langel - - who exhaustively examined the applications and, believing that the claimed technology fully complies with Sections 101 and 112, allowed six of them - - it was readily apparent that neither Examiner of record drafted the newly-minted Section 101 and 112 rejections now pending in the above-identified applications. Recent conversations with Examiners Kalafut and Langel confirmed that belief as I became aware that the Section 101 and 112 rejections were drafted by a "secret committee" of Examiners, Supervisors and Directors established to conduct a "behind the scenes" prosecution of the above-identified applications. I further learned that this secret committee instructed Examiners Kalafut and Langel to issue the Office Actions containing the Section 101 and 112 rejections. While the Office Actions fail to identify the make-up of the committee, I am aware of at least the following committee members:

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[1]Dr. Mills' PCT/US99/17129, International Preliminary Examination Report, Response to Applicant's Arguments Concerning the Written Opinion.

Examiner Vasudevan Salem Jagannathan
Examiner Suzi N. Tsang
Examiner Jerome Massie
Examiner Steven P. Griffin
Director Jacqueline M. Stone

Examiners Langel and Kalafut further informed me that they believe Examiner Jagannathan, a physicist, was the committee member who provided the most input on the Section 101 and 112 rejections. Upon learning this, I telephoned Examiner Jagannathan on January 16, 2001 to discuss his availability to attend the February 21st interview and to inquire as to the type of experimental evidence that would be required to satisfy him that Dr. Mills' technology is fully operable. I must say, I was stunned by Examiner Jagannathan's reaction to my call. He immediately raised his voice and in a very stern manner steadfastly refused to answer any questions or provide me with any information since, in his words, he is not the Examiner of record. Examiner Jagannathan further stated that only Examiners Langel or Kalafut could request his presence at the interview, without providing any assurance that he would comply with such a request.

It is bad enough that Examiner Jagannathan offered no explanation as to why he was not identified as an Examiner of record in this case based on the input he provided on the pending Office Actions. It only makes matters worse that he would use his non-record status as an excuse to withhold information that is vital to Dr. Mills prosecuting his applications.

Clearly, an interview with just Examiners Langel and Kalafut in attendance would be non-productive, since they both already believe that the applications fully comply with Sections 112 and 101 and, therefore, should be allowed. In essence, the Patent Office is requesting that we conduct a sham interview with what the Patent Office perceives to be "puppet" Examiners who did not even write, and disagree with, the rejections and without knowing the type of experimental evidence that would satisfy the concerns of the secret Examiners who are "pulling the strings." Dr. Mills has already submitted evidence relating to energy balances, heat and light data from working processes, and spectral data from compounds containing the lower-energy hydrogen atoms, including nuclear magnetic resonance spectroscopy, time-of-flight-secondary-ion-mass-spectroscopy, and X-ray photoelectron spectroscopy. It was precisely this evidence that convinced the Examiners of record to allow six of Dr. Mills' applications. Unfortunately, it appears that the Patent Office is not really interested in a fair and open discussion of the evidence, but rather, is seeking to "deep-six" Dr. Mills' technology along with the patent rights to which he is entitled.

The formation of a secret committee allied against Dr. Mills is just another example of the extreme lengths to which the Patent Office has gone to subvert issuance of Dr. Mills' patent applications. This latest action is consistent with the extreme positions the Patent Office has taken in litigation over the previously allowed applications that were withdrawn without the slightest review under mysterious circumstances. Indeed, Kevin Baer, the Patent Office's counsel, went so far as to argue to a federal judge that Examiners Kalafut and Langel allowed the six applications because they were "swamped" and "if they're going to approve it, they just approve it and kind of let it out the door." Attachment A. This argument not only repudiates the presumption of validity that attaches to issued patents, but further overlooks the fact that six lengthy personal interviews with Examiners Langel and Kalafut were conducted, during which extensive experimental results were discussed.

Strangely, Mr. Baer also argued that Dr. Mills is not qualified to invent the subject technology because he is a medical doctor, overlooking the fact that he is an accomplished chemist, and further that "[i]f someone actually invents this, assuming Dr. Mills has not invented this, if someone comes along and invents it in the future, they could be blocked by a valid patent [referring to Dr. Mills issued '935 patent]." Attachment B. This argument confirms Dr. Mills' strong suspicion that the Patent Office has been colluding with competitors of Dr. Mills', including Dr. Robert Park of the American Physical Society, who may be trying to appropriate Dr. Mills' technology. Dr. Mills has learned - - and the Patent Office has been made aware - - that there is a "deep throat" contact in the Patent Office with whom Dr. Park has had communications regarding Dr. Mills' pending patent applications. This fact, which was first brought to the attention of the Patent Office over four months ago during the litigation and to this day has not been denied. Attachment C.

In view of the above circumstances and in the interest of fairness, Dr. Mills requests a full written disclosure of all U.S. Patent Office personnel who took part in preparing the Section 101 and 112 rejections, as well as all U.S. Patent Office personnel who provided any input regarding the Office Actions in the above-identified applications. We request that all such persons be present at the February 21st interview. We also request that all members of the secret committee be identified and be present at the interview so that we can address any and all concerns of those who will actually decide the fate of the pending applications.

Dr. Mills has been made aware that the above-identified applications may have been reviewed by an unnamed "consultant" from the National Institutes of Science and Technology (NIST). Dr. Mills also requests full and fair written disclosure of all non-Patent Office personnel, including personnel from NIST, who were provided access to any of the above-identified applications and/or provided input on the Office Actions.

We ask that you also be present at the interview, as we would like to revisit the question of who was responsible for bringing Dr. Mills' '935 patent to the Patent Office's attention, thereby setting in motion the events that led to the withdrawal of Dr. Mills' allowed applications. You and the Patent Office have now taken three conflicting positions on this issue: (1) you stated to me on February 28, 2000 that you pulled the applications from issuance based on perceived heat - - a "fire storm" as you put it - - the Patent Office had received from an undisclosed, outside source in response to the issuance of the '935 patent, and that it was Gregory Aharonian who brought the '935 patent to the attention of the Patent Commissioner; (2) you stated in a signed affidavit filed with the D.C. District Court that your decision to withdraw the applications was not based on any "perceived heat the USPTO has received from an undisclosed, outside source," Attachment D; and (3) subsequently, the Patent Office's counsel argued during the May 22, 2000 hearing that he did not know how you became aware of the '935 patent, suggesting that a blimp could have flown over the Patent Office advising you of the '935 patent, for all it mattered, and then abruptly changed his position a short while later in a brief to the D.C. District Court stating that the press initiated the withdrawal of the applications, Attachment E. We would like to hear from you first hand, on the record, as to which individual(s) contacted you or other Patent Office personnel and instructed, or otherwise precipitated in, the withdrawal of the applications from issuance.

We believe that we are entitled to this information and that previous attempts to keep it secret - - even in response to two previous Senate inquiries - - are without basis. This information is not attorney-client privileged, nor the subject of any issue to be resolved in the pending litigation. Indeed, both the Patent Office and Dr. Mills have stipulated that information as to how the Patent Office became aware of the issued '935 patent that caused you to withdraw Dr. Mills' allowed applications from issuance is immaterial to the lawsuit. Furthermore, the Patent Office's argument that prosecution of the withdrawn applications should be separate and distinct from the lawsuit as a procedural matter, and its reopening of prosecution in these applications brings to the forefront questions regarding who instigated the taking of such actions, the real parties prosecuting the applications on behalf of the Patent Office, and the extent of any outside influences on the prosecution of these applications. This information has a direct bearing on the fair and open prosecution of these applications and, therefore, it must be disclosed.

Please also be advised, that due to the unusual actions the Patent Office has taken with respect to Dr. Mills' applications, as well as the significant impact of Dr. Mills' technology on U.S. energy policy, we intend to have one or more U.S. Senators and/or Government Officials be made of record in the applications and attend the interview to monitor the situation.

I look forward to your prompt written response to this letter.

Sincerely yours,

Jeffrey S. Melcher
Reg. No. 35,950
Customer No. 20736

CC: The Honorable Senator Max Cleland
The Honorable Senator Arlen Specter
Transition Office - Energy Department
Transition Office - Commerce Department
The Honorable Secretary Designate of Commerce - Don Evans
Examiner Vasudevan Salem Jagannathan
Director Jacqueline M. Stone
Examiner Suzi N. Tsang
Examiner Jerome Massie
Examiner Steven P. Griffin
Examiner Wayne A. Langel
Examiner Steven J. Kalafut
Dr. Randell L. Mills